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ROCKINGHAM COUNTY**

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On behalf of the Commonwealth's Attorney's Office for Rockingham County and the City of Harrisonburg, and the law enforcement officials involved, I wish to address the incident that took place April 16, 2010, when a search warrant was executed for photographs in the possession of the James Madison University newspaper, the Breeze. In addition, I will address the events preceding the execution of the warrant, and the steps I have taken since that warrant was executed.

On April 10, 2010, a series of violent events took place in various locations involving non-students and students of James Madison University. Several people were attacked and severely injured during the course of those events. A number of law enforcement officers were hurt as well. In addition, significant property damage occurred. Law enforcement made a number of arrests related to the actions that took place on April, 10, 2010, but we believed that additional information would be necessary in order to arrest all individuals, in particular those that were involved in the extremely violent attacks on various individuals.

When it became apparent that additional information would be necessary, a representative from our office contacted a Breeze Editor and a faculty advisor on April 15, 2010 in an attempt to obtain the photographs that two Breeze photographers had taken of Springfest. They pointed us to photographs that had been published in the newspaper or on its website. In addition, my representative spoke to James Madison University Director of Judicial Affairs and James Madison University counsel, who is also an Assistant Attorney General, both of whom declined to intervene.

Due to the need to investigate and apprehend the alleged violent criminals, the next morning, on April 16, 2010, I sought a search warrant from the Court to obtain the photographs, asking that the search warrant affidavit be sealed. Accompanied by a number of plainclothes police officers, I then went to the Breeze offices in order to execute the warrant. After waiting for the Editor to arrive, I requested that she provide copies of the Breeze's photographs. The Editor declined and, after consulting with an attorney, asserted that the photographs were protected by the reporter's privilege and could not be seized pursuant to the federal Privacy Protection Act. Acting under the search warrant, I advised the Editor that if the photographs were not provided, I would have no choice but to ask law enforcement to take any steps necessary to retrieve the photographs, including removing and searching all the equipment that potentially contained the photographs.

The Editor then agreed to download the photographs. After providing copies of the photographs, the Breeze's counsel again asserted the federal Privacy Protection Act prohibits law enforcement officials from using a warrant to seize newsgathering materials from a news organization like the photographs we were seeking. While we considered that issue, we did not review or copy the photographs we seized. Then, on the afternoon of April 18<sup>th</sup>, agreed to return the discs containing photographs to the Breeze's faculty advisor, who agreed to maintain custody of them so that our effort to obtain the photographs could be resolved appropriately.

I am happy to report that through the help of attorneys on behalf of the Breeze, and cooperation of the individuals associated with the Breeze, we have been able to resolve this matter. First, my focus, and the focus of law enforcement was only to obtain the photographs necessary to assist in apprehending violent criminals not to cause concern for the Breeze editors or staff. As a prosecutor, officer of the court, and elected official of the community I recognize the concerns of the Breeze and its staff, as well as other media sources, for the protection of the Constitution and First Amendment. I express my regret for the fear and concern that I caused the Breeze and its staff. The discussions that have occurred have enhanced my understanding and re-enforced the role of a free press in our democracy.

Second, because the journalist's privilege is a qualified privilege that can be overcome where the materials sought are essential to our investigation and where we had no other source of the information, our office substantially narrowed its request to seek photographs that satisfied that test. In lieu of receiving a subpoena for that more limited category of photographs, the Breeze agreed to provide twenty photographs. These additional materials will hopefully allow the law enforcement community to bring violent criminals to justice.

Finally, my office intends to follow and enforce the Constitution, as well as Federal and State statutes related to law enforcement and criminal investigations. In the future, absent an imminent need to prevent the loss of life or the threat of bodily injury, any information and documents which will be sought from any news agency or publication, including the Breeze, will be done so through the subpoena process accordingly.



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